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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of CHANDRA GEHRI and
GARY RAYMOND SPENCER.

2d Civil No. B208511
(Super. Ct. No. SD030089)
(Ventura County)

CHANDRA GEHRI SPENCER,

Appellant,

v.

GARY RAYMOND SPENCER,

Respondent.

Wife appeals the trial court's post-judgment order on reserved issues. Wife, an attorney, represented herself below and does so again on appeal. She disputes the trial court's ruling on five issues: (1) imposition of sanctions against her; (2) consideration of husband's overtime pay, vehicle use and unreimbursed business expenses in the calculation of his income; (3) each party's entitlement to home equity reimbursements; (4) wife's entitlement to reimbursement for dental care; and (5) travel restrictions for the minor child. We conclude that the trial court properly exercised its discretion, and affirm.

FACTS

Gary Raymond Spencer (husband) and Chandra Gehri Spencer (wife) were married on September 21, 1996, and separated on November 12, 2003. A judgment of dissolution (status only) was entered on December 30, 2004. The parties have joint physical and legal custody of their minor daughter, born September 3, 1998. Wife is an attorney and husband is a deputy sheriff for the Los Angeles County Sheriff's Department.

On May 21, 2008, a judgment of dissolution on reserved issues was filed, which addressed sanctions imposed against wife. A further judgment on reserved issues was entered on July 16, 2008, addressing the remaining matters raised in this appeal. The court reserved jurisdiction over the issues of attorney's fees and costs.

Marital Home

Prior to the parties' marriage, husband owned a home on Sunnyglen Drive in Moorpark. After they were married in 1996, wife moved into the Sunnyglen home, which remained in husband's name. Husband continued to pay the mortgage from his bank account. In March 2000, the parties sold the Sunnyglen property and purchased the Winter Wood house.

The proceeds of the sale from the Sunnyglen Drive house were \$90,106.55. Husband contributed this amount to the down payment on the Winter Wood home, and wife contributed \$4,025 in closing costs. The parties realized a profit of \$210,000 from the sale of the Winter Wood home, which they deposited into a joint escrow account. In June 2004, they stipulated to the distribution of \$10,000 each from the escrow account. In August, they stipulated to an additional distribution of \$15,000 to each party.

Child Support

On September 15, 2004, husband had filed an order to show cause (OSC) requesting the trial court to order guideline child support. In January 2006, a hearing was held on the OSC. In the judgment filed July 16, 2008, the court determined that, for the year 2006, husband had a monthly income of \$10,027 and wife had a monthly income of \$12,620. Their custodial timeshare is 50 percent. Husband paid \$580 per month in child

support for the child of a previous marriage. That obligation was to continue until March 18, 2006, when the child was due to graduate from high school. Wife was ordered to pay child support to husband of \$218 per month, retroactive to March 18, 2006.¹ For the purposes of this appeal, we need not consider the parties' incomes for the years 2004 and 2005.

1) Use of Sheriff's Department Vehicle

Husband is a bomb technician for the Los Angeles County Sheriff's Department's "bomb squad." He drives an "SUV" provided by the county, outfitted with special equipment. He does not pay for maintenance, gas or insurance. If he is off duty when he receives a call, he may be required to respond from home. Husband also owns a personal automobile, which he maintains. Wife argued that the value of the "vehicle benefit" should have been added to husband's gross income, because it reduced his living expenses. She claimed that husband derives a personal benefit because he does not have to drive his personal vehicle to the police station or a bomb site.

The court determined that it would not impute income to husband for the use of the sheriff's vehicle. It stated that this was not a situation in which husband was given a company car, rather, the car was a specially-equipped sheriff's vehicle and was needed so he could respond to calls.

2) Unreimbursed Business Expenses

Based on husband's tax returns, his counsel stated that husband's unreimbursed business expenses were \$6,601 in 2004, or \$542 per month. Wife objected, stating that husband had not previously raised this claim. She contended that husband reported this amount to be \$100 per month on his 2004 Income and Expense Declaration, and did not claim any amount for unreimbursed employee expenses on his 2005 Income and Expense declaration. The court indicated that it would allow

¹ The child support order was divided in four agreed-upon time periods, retroactive to the date of filing the OSC in 2004. Wife was ordered to pay the sum of \$98 per month for September 15, 2004, through December 31, 2004; \$223 per month for January 1, 2005, through December 31, 2005; \$299 per month for January 1, 2006, through March 18, 2006; and \$218 per month after March 18, 2006.

unreimbursed business expenses for both parties based on the amounts reported on their tax returns, and husband would be entitled to the 2004 reimbursement for the year 2006.

Credit Card Debt

Wife filed an order to show cause (OSC) seeking the characterization of credit card debt and requesting the release of funds from the escrow account for payment of community credit card debt. She declared that, as of the date of separation in November 2003, there were 11 credit cards and one line of credit in her name. She alleged that the balance due on the credit cards was a community debt of \$61,902.81. Wife stated that she had paid \$18,778.55 from her separate funds (after the date of separation) to reduce this debt, and requested reimbursement in this amount.

The parties entered into a stipulation that the community would pay \$67,204.17, representing 80 percent of the credit card debt. Husband was to pay 20 percent of the community debt as his separate property obligation. The parties waived any right to reimbursement. They stipulated that \$62,404.17 would be paid from the escrow account to the client trust account of wife's counsel, so that counsel could oversee the payments. Husband was to receive \$6,273.60 payable directly to him. The court retained jurisdiction to supervise the payments under the stipulation.

Reimbursement for Down Payment on Winter Wood Property

After they purchased the Winter Wood property in 2000, the parties took out a home equity line of credit for \$90,000, spent \$60,000 on community expenses, then refinanced the property. The parties obtained another equity line of credit for \$150,000. The funds were used for community purposes and the payment of community debt. The parties expended the entire \$150,000, then sold the Winter Wood property, realizing a profit of \$210,000, which they deposited into a joint escrow account.

At trial, husband requested \$90,100 in reimbursement for the down payment on the Winter Wood property, pursuant to Family Code section 2640,

subdivision (b).)² The court found that the proceeds from the sale of the Winter Wood property were community property. It determined that husband contributed 95 percent of the down payment on the Winter Wood property from his separate property funds and that wife contributed 5 percent of the down payment from her separate property funds. Each was entitled to reimbursement. The escrow account holding the remaining funds from the sale of the Winter Wood property was to be distributed 95 percent to husband and 5 percent to wife.

The trial court determined that each party's separate property contribution had been "adequately traced," and that the refinancing did not change the character of husband's separate property interest because the Winter Wood home continued to appreciate. "My quick math on this tells me that \$4,025 is about .0446 percent of \$90,106. So [husband is] entitled to 95 percent of whatever is left in the equity of the money from the house, and [wife] is entitled to 5 [percent] in round numbers" of the balance remaining in the escrow account. The court indicated that this was to compensate each of them for their separate property contributions to the residence.

Travel Restriction, Reimbursement for Child Support and Dental Care

Husband testified that he objected to wife causing their daughter to miss school for trips to Europe. He requested an order that neither parent be permitted to remove her from school for more than two days for travel. The court indicated it would grant husband's request, stating that it was reasonable that the minor not miss school for the purpose of travel.

Wife claimed a \$1,000 reimbursement for funds she spent on dental expenses. After wife filed the dissolution petition, husband changed the family's medical

² A party shall be reimbursed for the party's contribution to the acquisition of community property, provided the party can trace the contribution to a separate property source. Reimbursement shall be for the amount expended, without interest, and shall not be adjusted for a change in monetary value. This rule does not apply where the party has signed a written waiver of the right to reimbursement. (*Ibid.*)

insurance to obtain greater coverage for the child of his previous marriage. This resulted in wife paying \$1,000 out of pocket for her dental care. The court ruled that wife is not entitled to reimbursement for dental care following husband's change of insurance during the pendency of the proceedings. The court also refused to impute overtime income to husband that might have been available to him, but that he did not take.

Sanctions

Husband's counsel filed a notice in lieu of subpoena on the first day of trial directing wife to produce specified financial documents. Several days into trial, husband's counsel inquired whether wife had brought documents to court related to the payment of community credit card debt, and she replied that she had not. Counsel noted that he had requested wife to bring the checks to show she had paid the debt, and requested the court to strike wife's testimony as a sanction. Wife testified that she understood that she was to bring the balances on the credit card accounts to zero, but there was no deadline as to when they would be paid. Because she had no documentation that she had paid the debts, the court struck her testimony. She was ordered to provide documentation, including the checks, to husband's counsel by February 10, 2006.

In June 2007, husband filed an OSC for attorney's fees and an accounting on the credit card debt, requesting that the court enter a final judgment. The matter was set for a hearing. Wife filed a responsive declaration, alleging that she was awaiting information from a credit card company, and could not proceed until she had it. In July, the court conducted a hearing on husband's OSC. It ruled on the parties' objections to a proposed judgment and ordered that wife submit a proposed judgment to husband's counsel. The court never received a copy of the judgment.

The parties continued to schedule hearings on various issues related to the valuation of investment accounts and the credit card debt. At a hearing in April 2008, husband's counsel stated that wife had still not prepared a full accounting of her payment of the credit card debt, and asked it to impose sanctions. Wife stated that she had not intended to disobey the court's orders. She indicated that she wished to appeal the court's

judgment on the credit card debt, but has been unable to do so because the court had not issued a final judgment.

The trial court imposed sanctions against wife, ordering her to hold husband harmless for all community credit card obligations in existence at the time wife was given \$62,404.17 to pay the debt, pursuant to the court order filed December 27, 2004. Wife was ordered to pay to husband the sum of \$31,203 as a sanction for her failure to comply with a court order and for the breach of her fiduciary obligations to him.

DISCUSSION

Imposition of Sanctions

Wife argues that the trial court erred in awarding sanctions against her because it failed to provide her with adequate notice and the opportunity to be heard. The sanction was imposed due to wife's breach of her fiduciary duty to husband and her willful disobedience of a court order. A husband and wife owe each other a fiduciary duty of the highest good faith and fair dealing. The duty includes providing the other spouse with full information and an accounting concerning transactions relating to community property. (§ 721, subd. (b).) Remedies for breach of this duty include an award to the other spouse of 50 percent of the undisclosed or transferred asset, plus attorney's fees and costs. (§ 1101, subd. (g).) This provision has been held to be mandatory, rather than discretionary. (*Ibid.*; *In re Marriage of Hokanson* (1998) 68 Cal.App.4th 987, 993.)

Wife entered into a stipulation in December 2004 to pay over \$61,000 in credit card debt. Those funds were transferred to her. The court requested an accounting, which she repeatedly failed to provide. In 2006, the court sanctioned her (by striking her testimony) for failing to bring documents to court relating to payment of the debt. In 2006 and 2007, husband requested that wife be sanctioned by compensating him for half the monies she received for payment of the debt. On those occasions, the court denied the requests. In 2008, wife had still not provided an accounting and the court issued an order imposing the sanction. There is no merit to her argument that she lacked notice and an opportunity to be heard.

Section 2640 Reimbursement

Wife claims that husband has no right to reimbursement of his down payment on the Winter Wood property, because his separate property contribution was commingled in such a manner that it cannot be traced. Wife argues that this was due to the obtaining of two separate home equity lines of credit, whose proceeds were expended for the benefit of the community.

Whether the spouse claiming a separate property interest has adequately traced an asset to a separate property source is a question of fact for the trial court, and its finding must be upheld if supported by substantial evidence. (*In re Marriage of Cochran* (2001) 87 Cal.App.4th 1050, 1057-1058; *In re Marriage of Braud* (1996) 45 Cal.App.4th 797, 823.)

Section 2640 abrogates the presumption that separate property contributions are presumed to be a gift to the community. (*In re Marriage of Walrath* (1998) 17 Cal.4th 907, 914.) The statute provides that a party shall be reimbursed for the party's contribution to the acquisition of community property, provided the party can trace the contribution to a separate property source. Reimbursement shall be for the amount expended, without interest, and shall not be adjusted for a change in monetary value. This rule does not apply where the party has signed a written waiver of the right to reimbursement. (§ 2640, subd. (b).) A section 2640 reimbursement is made before the community property interest in that property is divided. (*In re Marriage of Walrath, supra*, at p. 913; *In re Marriage of Geraci* (2006) 144 Cal.App.4th 1278, 1286.)

Where real property has been refinanced, the court must calculate the ratio of the separate property interest to the real property's equity at the time of the refinancing. (*In re Marriage of Walrath, supra*, 17 Cal.4th 907 at p. 922.) Here, the calculation is simplified, because both properties were sold at a profit, and the proceeds placed in an escrow account. It is undisputed that husband's Sunnyglen Drive home was his separate property. He contributed \$91,106 from its sale to the down payment on the Winter Wood property. Wife contributed \$4,025. The proceeds from the sale of the Winter Wood property were placed in an escrow account, and have not been commingled with monies

from any other source. Substantial evidence supports the trial court's ruling that husband is entitled to 95 percent of the funds in the escrow account, and wife is entitled to five percent.

Child Support, Travel Restrictions and Dental Care

The statewide uniform guidelines govern the calculation of child support and seek to place the interest of children as the state's top priority. (§§ 4052, 4053, subd. (e).) There is a rebuttable presumption that the guideline formula is correct. (§ 4057, subd. (b).) We review a child support order for an abuse of discretion. (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 282.)

Wife attacks the trial court's findings used in the calculation of child support. She claims that the trial court should have included as income husband's vehicle use, unreimbursed business expenses, and overtime which was available, but which he did not take. However, the trial court's determinations on these matters were entirely reasonable. Husband's use of the county's vehicle was necessary for his job as a bomb technician. It was used primarily for work. The court awarded both parties their unreimbursed business expenses, based on the amounts reported on their tax returns. The amount of overtime hours, which husband did not work, cannot be considered as affirmative evidence of income. Wife has not demonstrated an abuse of discretion.

Likewise, there was no abuse of discretion in rejecting wife's request for reimbursement of \$1,000 for dental care. Husband changed insurance policies due to the need for additional coverage for his minor child from a previous marriage. That this cost wife additional funds does not entitle her to reimbursement.

The trial court's imposition of a travel restriction upon the parents is subject to its broad discretion. We review a child custody decision under the deferential abuse of discretion standard. (*In re Marriage of Burgess* (1996) 13 Cal.4th 25, 32.) We will affirm if the trial court could have reasonably concluded that the order advanced the best interest of the child. (*Ibid.*) The trial court determined that it was reasonable that the minor not miss school due to travel. It therefore ordered that both parents be permitted a

single day each school year to remove the child from school for the purpose of travel.
There was no abuse of discretion.

DISPOSITION

We affirm the judgments entered May 21, 2008, and July 16, 2008. Costs on appeal are awarded to respondent.

NOT TO BE PUBLISHED.

COFFEE, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Charles W. Campbell, Jr., Judge

Superior Court County of Ventura

Chandra Gehri Spencer, in pro. per., for Appellant.

Lascher & Lascher, Wendy C. Lascher, Eric R. Reed, for Respondent.

Green & Shinee, Helen L. Schwab for Association for Los Angeles Deputy
Sheriffs as Amicus Curiae on behalf of Respondent.